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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1063

MELVIN DANIEL HANNERS, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR REHEARING OF DENIAL OF CERTIORARI

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Petitioner Melvin D. Hanners respectfully petitions for rehearing of the Court's denial on April 15, 1974, of his petition for a writ of certiorari.[1]

The basis of this Petition is that there is a compelling reason, special to this case, why the Court should not have acted upon the certiorari petition without a response from the Government. The primary issue presented by the petition was whether the

[1] Mr. Justice Douglas noted that he would have granted certiorari.

Double Jeopardy Clause of the Fifth Amendment precludes successive prosecutions for the same conduct under (1) a State gambling statute and (2) 18 U.S.C. 1955, a federal assimilative statute incorporating the State gambling statute by reference. In the certiorari petition, it was pointed out (pp. 7-8) that the Department of Justice has a policy of declining to bring a second prosecution, even where legally permissible, except in rare cases and then only upon the approval of high-ranking officials.

On prior occasions, where the Solicitor General has considered that a second federal prosecution violated this Departmental policy, he has agreed to the vacation of the judgment of conviction. See *Petite* v. *United States*, 361 U.S. 529 (1960); cf. *Marakar* v. *United States*, 370 U.S. 723 (1962). At the very least, therefore, before this Court finally closes the door to Petitioner, it ought to hear from the Solicitor General as to (1) whether the prosecution of Petitioner was approved by the appropriate Department of Justice officials; and (2) whether the Government considers this prosecution to have been consistent with its policy on dual prosecutions. Even if the response of the United States in this matter were adverse to Petitioner, its content might well sharpen the issue, and provide a clearer basis for determination by this Court that this case warrants plenary consideration.

Petitioner had expected that the Government's responsive papers would have been filed some time ago.[2] It seems possible that one reason for the delay in filing

[2] The government's time to file its opposition expired on or about February 27, 1974. The petition for a writ of certiorari was filed on January 7, 1974.

was that internal consideration in the Department of Justice was being given the point discussed above.

In any event, for the reasons stated both in this Petition and in the certiorari petition the Double Jeopardy issue presented by this Petitioner is a very serious and substantial one; and we respectfully suggest that this Petition be granted and that an order be issued directing the Solicitor General to file a responsive paper to the certiorari petition within a stated period of time.

Respectfully submitted,

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Certificate of Counsel

I am a member of the Bar of this Court. I hereby certify that this Petition is filed in good faith and not for purposes of delay, and that it is based on intervening grounds not previously available to Petitioner.

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